

ATTACHMENT

G



CALIFORNIA BOARD OF ACCOUNTANCY

2000 EVERGREEN STREET, SUITE 250
 SACRAMENTO, CA 95815-3832
 TELEPHONE: (916) 263-3680
 FACSIMILE: (916) 263-3675
 WEB ADDRESS: <http://www.dca.ca.gov/cba>

Attachment G



ENFORCEMENT PROGRAM OVERSIGHT COMMITTEE MINUTES OF MEETING

January 19, 2006

THE WESTIN SAN FRANCISCO AIRPORT
 1 Old Bayshore Highway
 San Francisco, California 94030

FINAL**I. CALL TO ORDER**

Thomas Iino, Committee Chair, called the meeting of the Enforcement Program Oversight Committee (EPOC) to order at 1:30 p.m. on January 19, 2006. Mr. Iino stated that to ensure compliance with the Bagley-Keene Open Meeting Act, when a quorum of the Board is present at this meeting (eight members of the Board), Board members who are not serving on the EPOC must attend as observers only.

a. EPOC Members in Attendance

Thomas Iino, Chair	1:30 p.m. to 2:45 p.m.
Richard Charney	1:30 p.m. to 2:45 p.m.
Ruben Davila	1:30 p.m. to 2:45 p.m.
Clifton Johnson	1:30 p.m. to 2:45 p.m.
Bill MacAloney	1:30 p.m. to 2:45 p.m.
Renata Sos	1:30 p.m. to 2:45 p.m.
David Swartz	Absent

b. Board Staff and Legal Counsel in Attendance

Mary Crocker, Assistant Executive Officer
 Alice Delvey-Williams, Licensing Analyst
 Patti Franz, Licensing Manager
 Dominic Franzella, RCC Analyst
 Michael Granen, Deputy Attorney General
 Gregory Newington, Chief, Enforcement Division
 Nicholas Ng, Practice Privilege Analyst
 George Ritter, Legal Counsel, Department of Consumer Affairs
 Dan Rich, Administration Manager
 Michele Santaga, Enforcement Analyst
 Carol Sigmann, Executive Officer
 Jeanne C. Werner, Deputy Attorney General
 Aronna Wong, Legislative Analyst

c. Others in Attendance

Mike Duffey, Ernst and Young LLP
 Richard Robinson, Robinson & Associates
 Hal Schultz, California Society of Certified Public Accountants (CalCPA)
 Jeannie Tindel, California Society of Certified Public Accountants (CalCPA)

d. Board Members Observing

Ronald Blanc
Donald Driftmier
Gail Hillebrand
Olga Martinez

- e. Committee Chairs and Members Observing
Harish Khanna, Chair, Administrative Committee

II CONSIDERATION OF WHAT ACTS AND CRIMES SHOULD BE IDENTIFIED AS SUBSTANTIALLY RELATED TO THE PRACTICE OF PUBLIC ACCOUNTANCY

Mr. lino reported that substantially related acts and crimes were discussed by the EPOC in length at its January 20, 2005 meeting. At that time, the EPOC decided to postpone making any recommendations on this issue and revisit it in 2006.

Mr. lino stated that California Business and Professions Code Section 480 provides that the Board can deny a license on grounds that the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of a CPA. In that connection, California Code of Regulations, Section 99, gives descriptive guidance on the types of acts or crimes considered to be substantially related.

Mr. lino stated that there were two issues for consideration before the EPOC today:

- Should the substantial relationship criteria be expanded?
- If so, should this be accomplished through revision to Section 99 or through legislation to place the substantial relationship criteria in statute?

Mr. Newington summarized the informational paper regarding substantial relationship (Attachment 1) provided in the agenda packets. He indicated that the paper included a list of acts and crimes currently considered to be substantially related; two acts (filing a false tax return and fraud or dishonesty with the intent to benefit one's self or another) that DAG Jeanne Werner recommended be included in the substantially related criteria; and an additional list of various egregious acts or crimes.

Mr. Newington stated that it was the egregious acts or crimes that are open for debate by the EPOC because although these are heinous acts, they are not considered to be related to the practice of public accountancy. He noted that the Board would need specific rationale as to why it believes any of these acts are substantially related to the practice of public accountancy.

Mr. Ritter noted that many of the acts on the additional list are physical abuse types of acts. These types of acts are substantially related in the allied health boards where a stronger argument can be made for substantial relationship.

Mr. Granen added that acts that are not clearly related to the practice of public accountancy are more likely to be challenged. If the Board wishes to include any of these types of acts in the criteria, it would be best to seek legislation in order to have the Legislature's declaration that the acts are substantially related.

Ms. Sos inquired if Enforcement staff ever felt constrained under the current

substantial relationship criteria.

Mr. Newington responded that from an enforcement standpoint, the current criteria had not posed frequent problems. Instances that involved crimes not clearly related to the practice of public accountancy had historically been resolved without going to litigation. However, there are instances where he believed the Board could be placed in an uncomfortable position because the media and the public may not understand or appreciate the required substantial relationship feature. For example, the media and the public may challenge why an individual convicted of rape was allowed to hold a license.

During discussion, the EPOC determined that there was no need to seek legislation to place the criteria in statute since substantial relationship cases are rarely litigated. However, the EPOC agreed that expanding Section 99 would assist Board staff in substantiating substantial relationship. The EPOC did not want to develop a list of acts and crimes, but instead amend the regulation to give staff more latitude to exercise their judgment on a case by case basis.

Mr. Granen suggested adding a more general subsection stating, "any act or crime which evidences a present or potential risk to the safety or welfare of any person or the general public."

Mr. Davila believed the language to be too broad and could be subject to overapplication. He suggested the language focus more on the physical safety or wellbeing of employees, clients, or other people that would reasonably be encountered while in public practice.

Following discussion, it was the consensus of the Committee to request that staff draft a revision to Section 99 based on Mr. Granen's suggested language, but more carefully defines the population of people that could potentially be affected.

Ms. Sos also commented that she found Section 99(c) to be confusing and suggested that "dishonesty" and "fraud" from Section 99(c) be incorporated into Section 99(a) to state, "Dishonesty, fraud, or breach of fiduciary responsibility of any kind." This would clarify the regulation to show that any act involving dishonesty, fraud, or breach of fiduciary responsibility is substantially related.

III. DISCUSSION OF WHETHER A STAYED REVOCATION REMAINS ON LICENSEE LOOKUP BEYOND SEVEN YEARS

Mr. Newington provided background information on this agenda item, stating that in 1999, the Board studied the issue of what would be the proper length of time to disclose disciplinary actions. At that time, the Board adopted the policy that the existence of a disciplinary action would not be volunteered after seven years had elapsed from the effective date of the decision. Exceptions to this policy are revocations, license surrender, and long-term probation. In May 2005, the Board amended the policy to remove "long-term probation" as an exception.

At the November 18, 2005, Board meeting, some Board members commented that

Memorandum

EPOC AGENDA ITEM II.
January 19, 2006

BOARD AGENDA ITEM IX.E.2.
January 20, 2006

To : Thomas Iino, Chair, EPOC
EPOC Members
Board Members

Date : January 3, 2006

Telephone : (916) 561-1731

Facsimile : (916) 263-3673

E-mail : gnewington@cba.ca.gov

From : Gregory P. Newington
Chief, Enforcement Program

Subject : **CONSIDERATION OF WHAT ACTS AND CRIMES SHOULD BE IDENTIFIED AS
SUBSTANTIALLY RELATED TO THE PRACTICE OF PUBLIC ACCOUNTANCY**

Attachment

Attached is information prepared by Board staff regarding substantially related acts and crimes. This paper is being provided to assist the EPOC and Board members in their discussion of this issue.

**Action
requested**

This issue has been scheduled for action at the January 20, 2006, Board meeting. It is requested that the EPOC members review the attached and discuss this issue in order to present a recommendation at the Board meeting.

GPN:mls

CONSIDERATION OF WHAT ACTS AND CRIMES SHOULD BE IDENTIFIED AS SUBSTANTIALLY RELATED TO THE PRACTICE OF PUBLIC ACCOUNTANCY

California Business and Professions Code Section 480 provides that the Board may deny a license on the grounds that the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of a CPA. In that connection, Section 481 requires that each board develop criteria to aid it when considering whether an act or crime is substantially related to the qualifications, functions, or duties of the profession it regulates. (Please see Attachment 1.) The criteria are to be used when considering the denial, suspension, or revocation of a license.

Current Board Regulation Section 99, Substantial Relationship Criteria, (Attachment 2) provides descriptive guidance on the types of acts or crimes considered to be substantially related to the practice of public accountancy.

The issue of substantially related acts and crimes was brought up during discussion at the November 18, 2004 Practice Privilege Task Force Meeting, where it was noted that serious offenses such as substance abuse are not considered to be substantially related to the practice of public accountancy under Section 99. At that time, legal counsel commented that this type of act could be an indication that the person is unreliable in terms of serving a client. Since some members expressed concern that the current criteria may be too limited, the issue was referred to the Enforcement Program Oversight Committee for further review.

The EPOC held a lengthy discussion regarding substantially related acts and crimes at its January 20, 2005 meeting, but decided not to make any recommendations at that time and to revisit the issue in a year.

ISSUES FOR CONSIDERATION

The issues for consideration and recommendation to the Board are:

Should the substantial relationship criteria be expanded?

If the substantial relationship criteria are expanded, should this be accomplished through revision to Board regulation Section 99, or should the Board seek legislation to place the substantial relationship criteria in statute?

CURRENT SUBSTANTIAL RELATIONSHIP CRITERIA UNDER SECTION 99

For purposes of denying, suspending, or revoking a certified public accountant or public accountant license, current Section 99 provides that an act or crime shall be considered to be substantially related if to a substantial degree it

evidences present or potential unfitness to perform the functions authorized by his certificate in a manner consistent with the public health, safety, or welfare.

These acts or crimes include but are not limited to those involving the following:

- Fiscal dishonesty or breach of fiduciary responsibility of any kind;
- Fraud or deceit in obtaining a certified public accountant's certificate or a public accountant's permit;
- Dishonesty, fraud, gross negligence in the practice of public accountancy or in the performance of bookkeeping operations;
- Violation of any Board regulation or statute.

COMMENTS FROM THE JANUARY 20, 2005 EPOC DISCUSSION

To assist the current EPOC members in their discussion, provided below is a summary of comments/recommendations from the January 20, 2005 EPOC discussion of substantial relationship criteria.

- Deputy Attorney General Michael Granen recommended that the criteria be defined in statute. Although under Section 481, the Legislature has placed responsibility on the Board to develop criteria to aid in determining what is substantially related (Section 99), this is not the same as delegating to the Board the decision of which acts or crimes are substantially related. Under Section 99, the Board still has the burden to prove the act or crime is substantially related on a case by case basis.

If the criteria or acts/crimes are defined in statute, the Board would not have this burden; the Legislature would have already determined that the act or crime is substantially related. By freeing Board staff and the Attorney General's Office of this burden, the Board would potentially save money in prosecuting cases.

- Bob Miller, former DCA legal counsel, commented that moral turpitude/lack of moral character standards that relate to acts such as driving while under the influence of alcohol are fairly broad. He noted that this type of standard could be subject to abuse in its application to limit entry of people to a profession. Therefore, the Board should be specific in defining acts and crimes and provide sound reasoning why each is substantially related to public accountancy.

- Under the current Section 99, a relatively minor act such as shoplifting is considered substantially related. A more egregious act such as rape or violent assault is generally not considered substantially related.
- Mary Crocker, Assistant Executive Officer, commented that in the past, there has been more than one instance where the Board has issued a license to an individual who was convicted of child molestation or a similar act, because the Board previously concluded those types of acts were generally not substantially related.
- Gregory Newington, Enforcement Chief, commented that, historically, substantial relationship cases are rarely litigated.

SUBSTANTIALLY RELATED CRIMES/ACTS

Provided below is a list of crimes or acts for consideration.

*Examples of acts or crimes **currently** considered substantially related.*

- **Petty theft.**
- **Grand theft.**
- **Shoplifting.**
- **Forgery.**
- **Burglary.**
- **Tax evasion.**
- **Tax fraud.**
- **Securities fraud.**
- **Money laundering.**

Acts/crimes that Jeanne Werner, Deputy Attorney General, suggested be included in the substantially related criteria.

- **Filing a false personal income tax return** – In a previous Board case, an Administrative Law Judge ruled that this type of act was substantially related to the qualifications, functions, and duties of an accountant. The decision was designated as a precedent by the Board in 1999 because of the potential for this type of crime to recur.
- **Fraud or dishonesty with the intent to benefit himself or another** (to be distinguished from fraud or dishonesty in the practice of public accountancy).

Additional act/crimes for consideration of substantial relationship.

- Child abuse¹
- Any act or crime involving the sale, gift, administration, or furnishing of narcotics or dangerous drugs or dangerous devices.¹
- Driving under the influence or reckless driving while under the influence of drugs or alcohol.¹
- Assault and/or battery.¹
- Harassment or stalking.²
- Lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure.²
- Bribery.
- Perjury.
- Extortion.
- Vandalism.
- Arson.
- Child molestation.
- Spousal abuse.
- Kidnapping.
- Rape or attempted rape.
- Murder or attempted murder.

CONCLUDING COMMENTS

It was noted at the January 20, 2005, EPOC meeting that if the Board seeks to place substantially related acts or crimes in statute, Section 99 is still required by Section 481. Section 99 may need to be modified to supplement the statute.

¹ The Physician Assistant Committee of the Medical Board considers this act to be substantially related through regulation.

² The Board of Respiratory Care considers this act to be substantially related through regulation.